

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

ADMINISTRATIVE ORDER NO:
13-24-B AMENDED
SUPERSEDES 13-24-B

**IN RE: CLERK OF COURT – UNIFORM BREVARD COUNTY COURT CRIMINAL AND
TRAFFIC PROCEDURES**

WHEREAS, the Brevard County Judges have previously delegated authority and discretion to the Clerk of the Court to: continue, reschedule, re-enter, or cancel criminal (including county and municipal ordinance violations) and traffic court appearances; extend the deadline for payment of fines and court costs; issue D-6 clearances in advance of an emergency identification hearing; recall specific types of bench warrants without express court order; accept pleas of guilty or no contest in civil infraction cases, withholding or imposing an adjudication of guilt as appropriate; and assess fines and court costs, all without individual court orders; and

WHEREAS, the Clerk's exercise of the aforesaid authority and discretion has greatly assisted in reducing County Court dockets and demands upon county judges and their judicial assistants for decisions on routine matter; and

WHEREAS, uniformity among the County Court Divisions as to the nature and amount of authority and discretion so delegated would be beneficial; and

WHEREAS, the amounts of various fines of court costs required by law have not been specifically or clearly fixed by statute, court rule or administrative order with regard to certain offenses; and

WHEREAS, the goal of fair, consistent and efficient administration of justice will be better served if the aforesaid matters are treated uniformly throughout the county according to the traffic laws of the State of Florida and the oral or written orders of the Judges of this circuit and their judicial assistants; it is hereby;

ORDERED AS FOLLOWS:

1. Continuing, Rescheduling, Re-Entry, Cancelling and Scheduling Court Dates:
 - A. Continuances:

1. The Clerk shall have the authority to continue criminal (traffic and misdemeanor) first appearances cases one time, without court order, at the personal, written or telephonic request of a defendant who has not already failed to appear in the cause. The continuance shall be to the division's next available docket leaving sufficient time to provide notice. Defendants requesting a continuance in person, by telephone or in writing waive their right to a speedy trial. Defendants requesting a continuance in writing or by telephone shall be required to immediately submit to the clerk a written acknowledgement of the waiver of speedy trial bearing the case number(s), new court time and date, and signature. The deputy clerk authorizing a continuance shall note when and by what means the request for continuance was received, and the new court date granted. Defendants represented by counsel shall be instructed to contact their attorney with their request for a continuance.
2. The Clerk shall have the authority to continue civil traffic, parking and animal control hearings one time, at the request of either the defendant or law enforcement, to the division's next available docket if the request for continuance is received at least five business days before the hearing date, so as to allow the Clerk sufficient time to notify all parties and witnesses of the rescheduled hearing date. A request for continuance within five business days of the hearing shall be made to the assigned judge and if the judge grants the continuance, the Clerk shall use best efforts to notify the participants.
3. No second appearance, violation of probation first appearance or hearing, non-jury trial, docket sounding or jury trial shall be continued by the Clerk without the approval of the judge to whom the case is assigned. Defendants represented by counsel shall be instructed to contact their attorney with the request for continuance.

B. Rescheduling:

1. The Clerk shall have authority to reschedule, without court approval, criminal and civil first appearances dates erroneously assigned to an incorrect time, date or docket by law enforcement, surety or pre-trial release officer, when the error is detected sufficiently in advance so as to allow notification of the defendant by mail. The Clerk shall also notify defense counsel, the State Attorney, where appropriate, and the party making the erroneous assignment.
2. The Clerk shall have authority to reschedule, without court approval, criminal and civil first appearance dates where the defendant appears in court as instructed, on an erroneous date assigned by law enforcement, surety or pre-trial release officer, when the case does not appear on the docket and the court file is not readily available. The Clerk shall notify defense counsel, the State Attorney, where appropriate, and the party

making the erroneous assignment. The defendant shall be required to acknowledge the rescheduled court date in writing.

3. Cases rescheduled under sub-paragraphs one and two above shall be assigned to the next available correct docket in the appropriate division, allowing sufficient time for notification of the other parties by mail.

C. Re-Entry of Criminal Cases After Failure to Appear:

1. Unless instructed otherwise by the assigned judge, the Clerk shall have authority to re-enter a defendant who has failed to appear:
 - a. at a first appearance;
 - b. as ordered at the jail or work farm; or,
 - c. in response to an order to show cause as to unpaid fines, costs or community service.
2. Upon re-entering such a defendant, the Clerk shall schedule such defendant for appropriate proceedings before the assigned judge. All other defendants requesting re-entry following a failure to appear shall be instructed to turn themselves into the Brevard County Sheriff's Department.
3. The Clerk shall promptly activate and facilitate the issuance of bench warrants as ordered upon any failure to appear, unless instructed otherwise by the assigned judge. Warrants shall not be held or recalled by the Clerk without the judge's approval and defendants seeking to have warrants recalled shall be instructed to direct their request to the judge issuing the warrant.

D. Setting Civil Traffic Hearings:

1. If requested by the Defendant, the Clerk shall have authority to set a civil hearing within thirty-one days of the issuance of the citation.
2. A defendant timely demanding a civil traffic infraction hearing and requesting to submit an affidavit of defense in lieu of a personal appearance shall be required to post bond, a cashier's check or money order in the amount of the original civil penalty, plus applicable costs, as a condition precedent to the scheduling of the hearing.

E. Setting Emergency I.D. Hearings:

The Clerk shall have the authority to schedule a civil emergency I.D. hearing for a defendant whose driver's history reflects a Brevard County civil traffic infraction conviction when the defendant's license or driving privilege is then under suspension for that infraction and the defendant swears that he or she was not the driver to whom the citation was issued. The Clerk shall have the authority in civil and criminal traffic charges to issue a D-6 clearance ("suspended in error"), in advance of the civil I.D. hearing, or re-entered criminal court date [under, I(C)(1)], without charge, when, in the discretion of the Clerk, the defendant has a credible basis for requesting the civil I.D. hearing or criminal re-entry. When possible, a civil emergency I.D. hearing should be scheduled before the division to which the citation would have been originally assigned, at a date

no less than three weeks subsequent, so as to allow sufficient time to subpoena the officer issuing the citation.

F. Cancellation of Court Dates:

1. The Clerk shall have the authority to cancel a court date and dismiss the pending contempt charge for uncompleted community service and other court-ordered programs and schools if the defendant provides written proof of compliance to the Clerk at least five business days prior to the scheduled court hearing.
2. The Clerk shall have the authority to cancel a civil traffic infraction hearing at the request of a defendant wishing to enter a plea of guilty under F.S. s. 318(14)(4), to make an election to attend traffic school under s. 318.14(9) or to plead no contest and provide proof of compliance for offenses listed in the chart at IV.B below. The request may be made at any time before the hearing. The Clerk shall send written notice of the cancellation to the witnesses within 24 hours of receiving the request for cancellation from the defendant. The defendant must pay applicable fines and costs at the time of the cancellation.

2. Extensions of Time for Payment of Fines and Court Costs, Driver Improvement School and Proof of Compliance for Certain Traffic Offenses:

A. Criminal Fines and Court Costs:

If requested by the Defendant prior to the due date, the Clerk shall have the authority to grant a one-time 60-day extension for the payment of traffic and misdemeanor criminal fines and court costs, at the request of the defendant who is not on probation for the offense. The Clerk also has the authority pursuant to F.S. s. 28.246(2) to enter into scheduled payment plans with defendants. A defendant on probation shall be referred to the probation officer, who may elect to submit an appropriate extension request and order to the judge who placed the defendant on probation.

B. Civil Traffic, Parking, Animal Control and Marine Violation Penalties:

The Clerk shall have the authority to grant a one-time extension for the payment of civil penalties and court costs. The length of such extension shall not be later than a date which is 90 days from the date of the offense set forth in the citation. The Clerk also has the authority pursuant to F.S. s. 28.246(2) to enter in to scheduled payment plans with defendants for payment within a reasonable amount of time.

3. Conversion of Fines and DUI Court Costs to Community Service Hours and Vice Versa:

The Clerk shall not have the authority to convert civil or criminal fines, court costs or delinquency fees to community service or to convert community service to fines. Persons seeking such conversions must obtain permission from the Court.

4. Authorized Dispositions of Criminal and Civil Citations Without Court Order:

A. Pleas for Traffic Infractions:

1. Guilty Pleas:

Pursuant to F.S. s. 318.14(4) and this Order, the Clerk shall have the authority to accept pleas of guilty for civil traffic infractions in person or in absentia. The Clerk shall enter an adjudication of guilt and assess the application fines and costs.

2. Driver Improvement School Election:

- A. Pursuant to F.S. s. 318.14(9) and this Order, the Clerk shall have the authority to accept driver improvement school elections in person or in absentia for violations for which a court appearance is not mandatory. The Clerk shall accept the election, withhold adjudication and assess all applicable fines and costs. After making the election, the driver shall provide proof of school attendance within 90 days of the date of the infraction unless an extension of time is granted in accordance with Sec. II.B, above.
- B. The Clerk shall have the authority to accept a Driver Improvement School Certificate as timely, without judicial approval, when a certificate of completion is submitted within one year of the date of infraction, but which clearly shows a completion date within 90 days of the date of the infraction.
- C. The driver shall be responsible for payment of all fees previously imposed by the Clerk related to the untimely submission of the Driver Improvement School Certificate.

3. Bicycle helmet violations: Pursuant to F.S. 316.2065(3)(e) and this Order, the clerk shall have the authority to accept a receipt showing purchase of a bicycle helmet on or after the citation date and dismiss the citation. Upon submission of appropriate proof, the clerk shall dismiss the citation and make note on the docket that proof was verified. This option shall not be available to a defendant who has made a prior election under this provision. If proof of purchase is presented outside of the defendant's 30 day compliance period, a late fee is due. The defendant's right to exercise this option expires once the citation is referred to a collection agency for collection.

4. Proof of compliance: Pursuant to this Order, the Clerk shall have the authority to accept pleas of no contest in person or in absentia for the traffic infractions set forth below, to withhold adjudication of guilt and to assess authorized fines and costs. The person shall provide proof of compliance to the Clerk as prescribed below. This option shall not be available to a defendant who has made an election under this provision within the preceding 12 months. For infractions marked with an asterisk*, below, the Clerk shall dismiss the citation and assess the maximum fee allowed by rule or statute (\$10.00 in 2010) if the person provides proof that he was in compliance at the time of violation.

B. Traffic Offenses which may be remedied by providing proof of compliance to the Clerk:

1. Criminal offenses:

Florida Statute	Offense	Proof of Compliance
320.02(1)	Operating unregistered vehicle	Vehicle currently registered
320.02(4)	Failure to notify DHSMV of change of address	Proof of notification of change of address
320.131	Unlawful use of temporary tag if tag was expired less than 6 months	Vehicle currently registered
320.38	Non-resident exemption not allowed (FL resident without out-of-state tag)	Current Florida registration
322.03(1)	No valid license	Florida license valid at time of violation
322.03(5)*	License expired more than 6 months	Current Florida license
322.031	Non-resident exemption not allowed (FL resident with out-of-state license)	Current Florida license
322.16	Violation of restriction requiring glasses or hearing aid	Functioning glasses or hearing aid
322.32(1)	Possession of cancelled, suspended or revoked license	Reinstated license
322.57(2)	Driving motorcycle without motorcycle endorsement	License with motorcycle endorsement

2. Civil offenses:

Florida Statute	Offense	Proof of Compliance
316.646(1)*	Failure to display proof of insurance	Proof of insurance
320.0605*	Failure to exhibit registration upon demand	Proof of registration
320.07(3)*	Registration expired less than 6 months	Proof that vehicle is currently registered
322.065*	License expired less than 6 months	Current license
322.15(1)*	Failure to exhibit license upon demand	Proof of valid license

3. Time limits for proof of compliance and payment of fines and costs:

The defendant must enter a plea of no contest to the above listed infractions by the first court appearance date (if criminal and companion civil), or within thirty days of the issuance of the civil citation (if no companion criminal). Pursuant to Traffic Court Rule 6.291(c) and this Order, the Clerk shall have the authority to continue the first appearance date for up to sixty days for a criminal defendant making this election but unable to provide proof of compliance at the time of said election. A defendant so continued may show proof of compliance and pay the required fine and court costs at any time prior to or at the continued first appearance date. Defendants requesting a continuance in person, by telephone or in writing waive their right to speedy trial. Defendants requesting a continuance in writing or by telephone shall be required to

immediately submit to the clerk a written acknowledgment of waiver of speedy trial bearing the case number(s), new court time and date, and signature.

C. Offenses with Unspecified Minimum Civil Penalties:

Leaving child unattended in vehicle, F.S. s.316.6135: If not charged as a criminal violation under s. 316.6135(1)(a) or (4), the fine for a nonmoving violation of this provision is \$60.

D. Tender of Less Than Correct Civil Penalty and Court Costs:

If a defendant timely tenders, by mail or in person, a civil penalty and court costs sum totaling less than that required by law, the Clerk shall have the authority to dispose of the citation by accepting the lesser amount, if the defendant submits his or her copy of the citation and it confirms that the officer incorrectly indicated the sum required. In such cases, the civil penalty so accepted shall be allocated on a prorated basis, as provided by law, after deduction of court costs. If a defendant timely tenders, by mail or in person, a civil penalty and court costs sum less than that required by law, and does not submit his or her copy of the citation, or if it appears from a review of the citation that the officer provided a correct sum, the Clerk shall have authority to allow the defendant a thirty day extension for payment of the correct balance due, plus an additional \$5.00 civil penalty.

DONE AND ORDERED this 5th day of November, 2013.

JOHN M. HARRIS

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CHIEF JUDGE

Distribution:

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